

Memorandum in Opposition REAL PROPERTY LAW SECTION

RPLS #15-A

March 18, 2014

S. 6357-C, Part V
A.8557-C, Part V

By: BUDGET

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Senate Committee: Insurance

Assembly Committee: Insurance

Effective Date: 180 days after it shall
have become a law

AN ACT to amend Insurance Law, in relation to licensing of agents of authorized title insurance corporations.

LAW AND SECTIONS REFERRED TO: Various amendments and additions to the Insurance Law.

THE REAL PROPERTY LAW SECTION OPPOSES THIS LEGISLATION

The Legislature is considering three different versions of a title insurance agent licensing law that have been proposed by each House and by the Governor. The Real Property Law Section is in favor of the concept of licensing of title insurance agents. However, the various bills that are pending, while implementing a statutory framework for accomplishing such licensing, have some deficiencies that should be addressed.

First, each of the bills continues to promulgate an ambiguous section of the Insurance Law, Section 6409(d). This section of the law, which is an anti-kickback provision, has a laudable goal, but has unnecessarily been the subject of much debate and interpretation. Second, the Assembly bill and the Governor's proposed budget creates a new Section 2113 which requires certain consumer friendly disclosures, again a laudable goal, but would create new ambiguity if corrective language is not included. If these deficiencies are satisfactorily addressed, the Real Property Law Section would support the bill.

The Real Property Law Section of the New York State Bar Association ("RPLS") has studied the proposals and suggests corrective language as provided in this Memorandum.

1. Insurance Law Section 6409(d) – S. 6357-B, Part V/ A.8557-B, Part V (Governor’s Bill) Section 21, Page 194: Line 6;
S. 6357-C, Part V (Senate Bill) Section 21, Page 72: Line 37;
A.8557-C, Part V (Assembly Bill) Section 21, Page 70: Line 33.

Section 6409(d) is an anti-kickback provision that, as amended by the bills, prohibits giving or receiving anything of value prohibiting payments by a title insurer or title insurance agent to any individual or entity as an inducement for the referral of title insurance business. The broad language of Section 6409(d) might be misunderstood to imply that lawyers may be prohibited from acting as title insurance agents in matters where they are also rendering legal services and advice to their clients. In order to avoid this, and to clarify that the long-standing practices by lawyers of representing their clients in legal matters and acting as title agents are not prohibited, we suggest the following insertion at the end of Section 6409(d) of the Insurance Law:

“Nothing in this section shall be deemed to prohibit an attorney or his or her law firm from representing a client in a matter and acting as a title insurance agent for the issuance of a policy of title insurance in such matter or be deemed to prohibit payment (i) for actual services rendered by an attorney for the purposes of representing his or her client, and (ii) to an attorney or his or her law firm in his, her or its capacity as a title agent.”

2. Insurance Law Section 2113(d) – S. 6357-B, Part V/ A.8557-B, Part V (Governor’s Bill) Section 10, Page 170: Line 25;
A.8557-C, Part V (Assembly Bill) Section 10, Page 56: Line 51.

RPLS supports the disclosure of insurance costs, fee and charges to the consumer. However, we believe that the requirement to provide the appropriate disclosure to applicants is ambiguous and could lead to varying interpretations. Therefore, we suggest substituting the following lead-in language for this Section:

“At the time of the preparation of a title insurance commitment or certificate of title, the title insurance agent shall provide to the person or entity paying the premium or to his authorized representative, a written good faith estimate of the premium on the policy or policies to be issued and to the extent such are to be collected by the title insurance agent, the amount of all fees and service costs”

3. Insurance Law Section 2113(g) – S. 6357-B, Part V/ A.8557-B, Part V (Governor’s Bill) Section 10, Page 171: Line 10;
S. 6357-C, Part V (Senate Bill) Section 12, Page 66: line 3;
A.8557-C, Part V (Assembly Bill) Section 10, Page 57: Line 42.

This new Section of the Insurance Law prohibits the payment of fees by title insurance companies to title insurance agents, except where the referral complies with Section 6409(d) of the Insurance Law. When a lawyer is a title agent and represents a client in a real estate matter, the attorney, with the proper disclosure to the client and consent from the client, may arrange for title insurance through the company that employs the attorney as a title insurance agent. However, Subsection (3) of Section 2113(g) might be misunderstood to prohibit a title company from paying an attorney-title insurance agent for services actually rendered. To prevent any possible misunderstanding of the intent of this Section, RPLS suggests that Section 2113 of the Insurance Law be clarified by adding the following:

“Nothing in this section shall be deemed to prohibit an attorney or his or her law firm from representing a client in a matter and acting as a title insurance agent for the issuance of a policy of title insurance in such matter or be deemed to prohibit payment (i) for actual services rendered by an attorney for the purposes of representing his or her client, and (ii) to an attorney or his or her law firm in his, her or its capacity as a title agent.”

Based on the foregoing, the RPLS Task Force on Title Agent Licensing **Opposes** these proposals, unless amended as suggested.

Preparer of this Memorandum: RPLS Task Force on Title Agent Licensing

Section Chair: Benjamin Weinstock, Esq.